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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,099

08/21/2003

Jeff Scott Eder

VM-55

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04/02/2010

ASSET TRUST, INC.
2020 MALTBY ROAD
SUITE 7362
BOTHELL, WA 98021

EXAMINER

MEINECKE DIAZ, SUSANNA M

ART UNIT

PAPER NUMBER

3684

MAIL DATE

DELIVERY MODE

04/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Attachment to Notice of Non-Compliant Amendment

1. Claims 33-40 are listed as currently amended or previously presented; however, they should be listed as withdrawn claims. Please correct the status identifiers for withdrawn claims 33-40.

Status of Appeal Briefs

2. The first appeal brief (filed October 5, 2009) and the second appeal brief (filed December 27, 2009) have both been prematurely filed and, therefore, are not entered. (The Notification of Non-Compliant Appeal Brief dated October 28, 2009 was sent in error. Please disregard the October 28, 2009 notice.) The claim amendment and response filed on July 5, 2009 are recognized as a reply under 37 CFR 1.111(a)(2) (however, the claim amendment is non-compliant). The Rule change package of 2004 addresses these situations in the FAQ section

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/bpaifaq.html>

C7. If applicant filed a reply under 37 CFR 1.111 in response to a second non-final rejection and filed a notice of appeal before the Office considers the reply and makes another rejection, would such a notice of appeal be proper? [posted 9Sept2005]

Ordinarily, a notice of appeal would have been proper when at least one claim has been twice rejected. In this instance, however, since applicant has elected to request reconsideration of the rejection (or further examination) by filing a reply under 37 CFR 1.111 rather than only appealing from the second non-final rejection, the notice of appeal is premature for the following reasons:

(1) The Office has not had the opportunity to consider the reply under 37 CFR 1.111 and issue an Office action in view of the reply (note that this is different than after-final situations where a reply under 37 CFR 1.116 is not entered as matter of right and applicant is appealing from the final rejection);

(2) The status of the claims are uncertain as to whether the examiner would reject the claims again in view of the reply (e.g., the appeal would be unnecessary if the reply places the claims in

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condition for allowance);

(3) The grounds of rejection are uncertain as to whether the examiner would apply the same grounds of rejection made in the second non-final rejection or make a new ground of rejection with or without using a new prior art reference;

(4) It is unclear which “decision” by the examiner applicant is appealing from because the second non-final rejection may no longer be relevant in view of the reply under 37 CFR 1.111 and the examiner has not issued another decision in response to the reply under 37 CFR 1.111; and

(5) A two-month time period for filing an appeal brief cannot be running against the applicant when applicant cannot determine whether the claims are under rejection again and which grounds of rejection would apply to the claims.

Accordingly, a notice of appeal is prematurely filed, and is thus defective when it is filed after a reply under 37 CFR 1.111 but before the Office issues another Office action in view of the reply. Applicant must wait to file any appeal until the examiner considers the reply and the claims are rejected again. Once the Office action mailed in response to the reply applicant may file another notice of appeal under 37 CFR 41.31. (Similarly, a notice of appeal is defective if it is filed on the same day as the reply under 37 CFR 1.111 or a request for continued examination (RCE) under 37 CFR 1.114. See Questions and Answers C8 and C9.)

Any previously paid fees for the first notice of appeal will be applied to the new notice of appeal. If, however, the appeal fee has increased, applicant is required to pay the difference between the current fee and the amount previously paid at the time of filing the second notice of appeal. Any patent term adjustment determination for a successful appellate review will begin on the date of the new notice of appeal and not on the date of the defective notice of appeal.

C8. If a reply is filed with a notice of appeal in response to a second non-final rejection, how would the Office treat the reply and the notice of appeal? [posted 9Sept2005]

The Office will treat the reply under 37 CFR 1.111. For example, if the reply is a fully responsive reply to the second non-final rejection that presents an amendment under 37 CFR 1.121, an affidavit or declaration, and/or arguments, the reply would be entered and considered by the examiner. If the reply does not place the application in condition for allowance, the Office will mail an Office action (that may include a non-final rejection or a final rejection as appropriate, but not an advisory action) in response to the reply. The Office will treat the notice of appeal as defective because it was prematurely filed before the examiner considers the reply under 37 CFR 1.111. See Question and Answer C7.

Conclusion

3. It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant

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may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.

CERTIFICATE OF MAILING

To ensure that the Applicant's mailed response is considered timely filed, it is advisable to include a "certificate of mailing" on at least one page (preferably on the first page) of the response. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on (date).

(Typed or printed name of the person signing this certificate)

(signature)

CERTIFICATE OF TRANSMISSION

Alternatively, if applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300 (date).

(Typed or printed name of the person signing this certificate)

(signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They must be signed, and the date must be the actual date on which it is mailed or transmitted.

For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date the U.S. Postal Service actually delivers the response, or the fax is "date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.

In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally**

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signed Certificate of Mailing or Transmission statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

NOTICE TO APPLICANT: In the case of lost or late responses the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or a private shipper such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Susanna M. Diaz/

Primary Examiner, Art Unit 3684